

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

HILLARD S. BETHEA,

No. 3:19-CV-01713

Plaintiff.

(Judge Brann)

v.

THERESA DELBALSO,  
SUPERINTENDENT, *et al.*,

Defendants.

**MEMORANDUM OPINION**

**OCTOBER 15, 2020**

**I. BACKGROUND**

Plaintiff Hillard Bethea, a Pennsylvania state prisoner incarcerated at SCI–Mahanoy in Frackville, Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging that prison officials confiscated and destroyed 170 personal photographs he “concealed” in his pockets.<sup>1</sup> Plaintiff has also filed a motion to proceed *in forma pauperis*.<sup>2</sup> For screening purposes, that motion will be granted and the complaint dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

**II. FACTUAL ALLEGATIONS**

On the evening of May 14, 2018, during “rec/yard movement,” Corrections Officer (“CO”) Brzozowski confiscated 170 photographs Bethea (“Plaintiff”)

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<sup>1</sup> Doc. 1.

<sup>2</sup> Doc. 2.

concealed in his pocket. CO Brzozowski did not issue Plaintiff a confiscation receipt for the photographs.<sup>3</sup> Plaintiff filed Grievance No. 737989 on May 20, 2018, concerning the confiscation.<sup>4</sup> Lt. Trometter denied Plaintiff's grievance on May 30, 2018.<sup>5</sup> Plaintiff alleges Lt. Trometter "allow[ed] her officers" to forge his name on "a confiscation slip in agreement for the photographs to be destroyed."<sup>6</sup> Plaintiff claims he raised his complaint with Superintendent DelBalso who "never responded" to his grievance.<sup>7</sup> On June 3, 2018, Plaintiff filed an appeal to final review.<sup>8</sup>

Plaintiff seeks the return of his photographs or monetary compensation for their loss.<sup>9</sup>

### **III. DISCUSSION**

Sections 1915(e)(2) and 1915A of Title 28 require a court to review complaints prior to service in cases in which a plaintiff is proceeding *in forma pauperis* and in which a plaintiff is incarcerated.<sup>10</sup> The Court must *sua sponte* dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune

<sup>3</sup> Doc. 1 at ¶ 1.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at ¶ 2.

<sup>7</sup> *Id.* at ¶ 3.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> See 28 U.S.C. §§ 1915(e)(2), 1915A.

from such relief. This action is subject to *sua sponte* screening for dismissal under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A because Plaintiff is proceeding *in forma pauperis* and is also incarcerated.

To survive *sua sponte* screening for failure to state a claim, the complaint must allege “sufficient factual matter” to show that the claim is facially plausible.<sup>11</sup> ““A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.””<sup>12</sup> “[A] pleading that offers ‘label or conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’”<sup>13</sup> In determining whether a complaint states a plausible claim for relief, this Court must “accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor.”<sup>14</sup>

Given Plaintiff’s allegations concerning the alleged intentional destruction of his personal property, the Court construes his claim as a Fourteenth Amendment violation for the deprivation of property without due process of law. Neither the negligent nor the unauthorized intentional deprivation of property by a state

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<sup>11</sup> *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009).

<sup>12</sup> *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 308 n. 3 (3d Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

<sup>13</sup> *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

<sup>14</sup> *Alpiza-Fallas v. Favero*, 908 F.3d 910, 914 (3d Cir. 2018).

employee gives rise to a due process violation if state law provides an adequate post-deprivation remedy.<sup>15</sup>

The United States Court of Appeals for the Third Circuit has held that the Pennsylvania Department of Correction's ("DOC") prison grievance system constitutes an adequate post-deprivation remedy.<sup>16</sup> Pennsylvania tort law also provides an adequate remedy for prison officials' unlawful deprivation of inmate property.<sup>17</sup> Plaintiff asserts that he availed himself of the DOC's grievance system. Thus, an adequate post-deprivation remedy was available to him. To the extent Plaintiff argues that his grievance was wrongfully denied or mishandled, he has not alleged the denial of a federal right.<sup>18</sup> Likewise, if dissatisfied with the grievance process or its result, Plaintiff had a suitable remedy under the Pennsylvania Tort Claims Act.<sup>19</sup> Therefore, Plaintiff's Fourteenth Amendment procedural due process claim is subject to dismissal pursuant to 24 U.S.C. § 1915(e)(2)(B)(ii) as it fails to state a cognizable constitutional claim.

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<sup>15</sup> See *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (negligent acts of officials causing unintentional loss of property does not violate due process); see also *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (intentional deprivation of property does not violate due process if meaningful post-deprivation remedy for loss is available.)

<sup>16</sup> See *Monroe v. Beard*, 536 F.3d 198, 210 (3d Cir. 2008); see also *Tillman v. Lebanon Cnty. Corr. Facility*, 221 F.3d 410, 422 (3d Cir. 2000) (holding that prison's grievance program and internal review provides an adequate post-deprivation remedy to satisfy due process).

<sup>17</sup> See 42 PA. CONS. STAT. ANN. § 8522 (b)(3); see also *Shakur v. Coelho*, 421 F. App'x 132, 135 (3d Cir. 2011) (per curiam) (Pennsylvania Tort Claims Act provides adequate remedy for willful destruction of property).

<sup>18</sup> See *Caldwell v. Beard*, 324 F. App'x 186, 189 (3d Cir. 2009) (per curiam).

<sup>19</sup> See *Hernandez v. Corr. Emergency Response Team*, 771 F. App'x 143, 145 (3d Cir. 2019) (per curiam) ("Even if the prison grievance procedures could be considered constitutionally inadequate, Pennsylvania's state tort law would provide an adequate remedy.")

#### **IV. LEAVE TO AMEND**

When a complaint fails to present a *prima facie* case of liability, district courts must grant leave to amend before dismissing the complaint unless amendment would be futile.<sup>20</sup> For the reasons set forth above, Plaintiff's claims against the Defendants are legally flawed and therefore incurable. Consequently, the Court concludes that curative amendment would be a futile endeavor.

#### **V. CONCLUSION**

Based on the foregoing, Bethea's motion to proceed *in forma pauperis* will be granted but his complaint will be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B). An appropriate Order follows.

BY THE COURT:

s/ Matthew W. Brann  
Matthew W. Brann  
United States District Judge

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<sup>20</sup> See *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).